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9 LLC, Open 4 Business Productions LLC, and  
NBCUniversal Media, LLC  
10

11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA  
13

14 NBC STUDIOS, LLC; UNIVERSAL  
NETWORK TELEVISION, LLC;  
15 OPEN 4 BUSINESS PRODUCTIONS  
LLC; and NBCUNIVERSAL MEDIA,  
16 LLC,

17 Plaintiffs,

18 v.

19 DISH NETWORK CORPORATION;  
DISH NETWORK L.L.C.,  
20 ECHOSTAR CORPORATION, and  
ECHOSTAR TECHNOLOGIES, LLC,

21 Defendants.  
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CASE NO. 2:12-cv-04536-DMG-SH

**NOTICE OF MOTION AND  
MOTION FOR TEMPORARY  
STAY**

**[Declaration of Patricia H. Benson  
Filed Concurrently]**

Time: 9:30 a.m.  
Date: April 19, 2013

1 TO DEFENDANTS AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that at 9:30 a.m. on April 19, 2013, in Courtroom  
3 No. 7 of the above entitled court, located at 312 N. Spring Street, Los Angeles,  
4 California 90012, Plaintiffs NBC Studios, LLC, Universal Network Television  
5 LLC, Open 4 Business Productions LLC, and NBCUniversal Media, LLC  
6 (collectively, "NBCU") will and hereby do move the Court to stay this Action  
7 temporarily, until final disposition, including exhaustion of all rights before the  
8 United States Supreme Court, of Fox Broadcasting Company's appeal of the denial  
9 on November 7, 2012 by the District Court of its Motion for a Preliminary  
10 Injunction in the litigation styled *Fox Broadcasting Company, Inc., et al. v. DISH*  
11 *Network L.L.C. et al.*, (United States District Court, Central District of California),  
12 CV-12-04529 DMG (SHx) (the "Fox Appeal.")

13 The Motion will be made on the grounds that (1) there is a strong likelihood  
14 that the outcome and rulings in the Fox Appeal will materially impact both the  
15 discovery proceedings and substantive disposition of the claims and defenses the  
16 parties have respectively asserted in this action, and (2) the final disposition of the  
17 Fox Appeal would also likely provide the parties greater certainty in the law that  
18 would assist in their evaluation of the complex issues and their litigation strategy  
19 involved in this action. Therefore, the interests of judicial economy and efficiency  
20 are well served by staying this action temporarily until the final disposition of the  
21 Fox Appeal.<sup>1</sup>

22  
23 <sup>1</sup> On March 15, 2013, the United States District Court for the Southern District of  
24 New York issued an order transferring to the United States District Court for the  
25 Southern District of California claims against and by NBCUniversal Media LLC  
26 asserted in *Dish Network LLC v. American Broadcasting Companies, Inc. et al.*,  
27 No. 12 Civ. 4155 (LTS)(KNF) (the "transferred New York Action"). The  
28 transferred New York Action is now pending in the Southern District of California  
as Case No. CV13-1899-DDP (AGRx). The issues in the transferred New York  
Action are identical to the contract-related issues in the instant action. On March  
21, 2013, Dish Network LLC, the Plaintiff in the transferred New York Action,  
filed a Notice of Related Cases, which NBCU believes will result in the transferred  
New York Action being reassigned to this Court. By this Motion, NBCU requests  
a Temporary Stay of both the instant case and the transferred New York Action.

1 The Motion will be based on this Notice of Motion and Motion, the  
2 Declaration of Patricia H. Benson and Memorandum of Points and Authorities  
3 served and filed concurrent herewith, on all pleadings and papers on file herein, on  
4 all matters of which the Court may take judicial notice, and on such further  
5 evidence and argument as may be presented before or at the hearing of the Motion.

6 This Motion is made following conferences of the parties' respective in-  
7 house counsel that culminated in a telephonic conference between litigation  
8 counsel of record for the parties on March 19, 2013. Defendants' counsel of record  
9 has represented that Defendants not only do not oppose, but affirmatively support  
10 the requested stay.

11  
12 DATED: March 21, 2013

RESPECTFULLY SUBMITTED,

13 Robert H. Rotstein  
14 Patricia H. Benson  
15 Jean Pierre Nogues  
16 J. Matthew Williams  
MITCHELL SILBERBERG & KNUPP LLP

17 By: /s/ Patricia H. Benson  
18 Patricia H. Benson  
19 Attorneys for Plaintiffs  
20 NBC Studios, LLC, Universal Network  
21 Television LLC, Open 4 Business  
22 Productions LLC, and NBCUniversal  
23 Media, LLC  
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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

This lawsuit involves claims by Plaintiffs NBC Studios, LLC, Universal Network Television LLC, Open 4 Business Productions LLC, and NBCUniversal Media, LLC (collectively, “NBCU”) against Defendants DISH Networks L.L.C., DISH Network Corporation, Echostar Corporation and Echostar Technologies, LLC (collectively, “DISH”) for copyright infringement and breach of contract arising out of two functionalities of DISH’s Hopper DVR, which DISH calls PrimeTime Anytime and AutoHop. (NBCU and DISH are sometime referred to hereafter collectively as the “Parties.”)

In a related action currently pending before this Court, Fox Broadcasting Company, Inc. Twentieth Century Fox Film Corp., and Fox Television Holdings (collectively, “Fox”) have also sued DISH for copyright infringement and breach of contract, challenging those same functionalities of DISH’s Hopper DVR. *Fox Broadcasting Company, Inc. et al. v. DISH Network L.L.C. et al*, CV-12-04529 DMG (SHx) (the “Fox Litigation”). On August 22, 2012, Fox moved for a preliminary injunction, which this Court denied on November 7, 2012. On November 9, 2012, Fox appealed the order denying its preliminary injunction motion to the Ninth Circuit Court of Appeals (the “Fox Appeal”). That appeal is now fully briefed, and the parties to the appeal are awaiting a hearing date.

The outcome of the Fox Appeal, which involves claims and issues that are substantially identical to those in this lawsuit, will most likely clarify important legal issues relating to the rights of the Parties, and thus will materially impact both the discovery proceedings and substantive disposition of the claims and defenses the Parties have respectively asserted in this action. The final disposition of the Fox Appeal also likely will provide the Parties greater certainty in the law that would assist in their evaluation of the complex issues and their litigation strategy involved in this action. Thus, the interests of judicial efficiency and economy

1 clearly would be furthered by the issuance of a temporary stay pending final  
2 disposition of the Fox Appeal.

### 3 **II. THE COURT HAS THE POWER TO STAY THIS ACTION**

4 It is well settled that a district court has the inherent power to stay  
5 proceedings before it. *CMax, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962)  
6 (affirming order staying proceedings in district court: “A district court has inherent  
7 power to control the disposition of the causes on its docket in a manner which will  
8 promote economy of time and effort for itself, for counsel, and for litigants.”)  
9 (citing *Landis v. North American Co.*, 299 U.S. 248, 254-55, 57 S. Ct. 163, 81  
10 L.Ed. 153 (1936)).

11 Where it is proposed that a pending proceeding be  
12 stayed, the competing interests which will be affected by  
13 the granting or refusal to grant a stay must be weighed.

14 Among these competing interests are the possible  
15 damage which may result from the granting of a stay, the  
16 hardship or inequity which a party may suffer in being  
17 required to go forward, and the orderly course of justice  
18 measured in terms of the simplifying or complicating of  
19 issues, proof, and questions of law which could be  
20 expected to result from a stay.

21 *CMax, supra*, 300 F.2d at 268.

22 Analyzing these interests, district courts within and outside the Ninth Circuit  
23 have not hesitated to grant stays under circumstances similar to those present here.  
24 *See, e.g., Bickley v. Schneider National Carriers, Inc.* (No. CV 08-05806 JSW)  
25 2013 U.S. Dist. LEXIS 8638 at \*2-3 (N.D. Cal., January 22, 2013) (granting  
26 motion to stay pending resolution of appeals filed before Ninth Circuit, and noting:  
27 “The power to stay proceedings is incidental to the power inherent in every court  
28 to control disposition of the cases on its docket with economy of time and effort for

1 itself, for counsel, and for litigants”); *Graham v. Overland Solutions, Inc.*, (No.  
2 10cv672-BEN (BLM)) 2011 U.S. Dist. LEXIS 131714 (S.D. Cal., November 15,  
3 2011) (granting joint motion to stay proceedings pending court approval of class  
4 settlement, and noting: “The lack of opposition from either party to staying the  
5 action supports a finding by this Court in favor of granting the stay.”).

6 Here, resolution of Fox’s Ninth Circuit appeal will clarify the rights of the  
7 Parties, such that they can determine what discovery and dispositive motions are  
8 warranted. Inasmuch as NBCU is requesting the stay and DISH consents to it,  
9 neither will be harmed by it; to the contrary, absent a stay, the Parties and the  
10 Court are likely to suffer harm, as they will be forced to expend time and resources  
11 on motion practice and other proceedings that ultimately may not be necessary or  
12 that may be superseded by decisions from the appellate courts. A stay will benefit  
13 the Parties and the orderly course of justice, because a final appellate decision will  
14 clarify issues of law, and hence help determine what proof is needed, so that the  
15 case can be litigated more efficiently. Under similar circumstances, the Hon.  
16 George H. Wu of this Court recently entered a temporary stay, pending appeal, in  
17 two related cases in which plaintiff distributors and licensors of copyrighted works  
18 that appear on free, over-the-air broadcast television networks, among other  
19 distribution channels, sought and obtained a preliminary injunction against  
20 Defendants who offered Plaintiffs’ copyrighted content through internet and  
21 mobile device streaming, without Plaintiffs’ authorization. *See Fox Television*  
22 *Stations, Inc. v. Aereokiller, LLC*, case no. CV-12-6921 and *NBCUniversal Media,*  
23 *LLC v. Aereokiller, LLC*, case no. CV-12-6950 [Dkt. # 110]. (For the Court’s  
24 convenience, a copy of Judge Wu’s Order is attached as Exhibit 1 to the  
25 Declaration of Patricia H. Benson served and filed concurrently herewith.)  
26  
27

1 **III. CONCLUSION**

2 For all of the foregoing reasons, NBCU respectfully requests the Court to  
3 grant this Motion and enter an Order staying this Action temporarily, until final  
4 disposition of the Fox Appeal, including exhaustion of all rights before the United  
5 States Supreme Court.  
6

7 DATED: March 21, 2013

RESPECTFULLY SUBMITTED,

8 Robert H. Rotstein  
9 Patricia H. Benson  
10 Jean Pierre Nogues  
11 J. Matthew Williams  
12 MITCHELL SILBERBERG & KNUPP LLP

13 By: /s/ Patricia H. Benson  
14 Patricia H. Benson  
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